

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTHONY M. HERRERA,

Plaintiff,

v.

JEFF LYNCH, et al.,

Defendants.

No. 2:24-cv-1660 DJC CSK P

ORDER

I. INTRODUCTION

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is defendants' motion to compel plaintiff's deposition and plaintiff's request to remove defense counsel. (ECF Nos. 46, 49.) For the following reasons, defendants' motion to compel is granted, plaintiff's motion to remove defense counsel is denied, and discovery is reopened for the limited purpose of permitting defendants to complete plaintiff's deposition.

II. MOTION TO COMPEL

A. Legal Standards

Because the motion to compel was filed after discovery closed on August 29, 2025, this Court analyzes defendants' motion under the legal standards for motions to compel and motions to reopen discovery.

1 1. Motion to Compel

2 Defendants are entitled to conduct discovery, which includes taking the deposition of
3 plaintiff, to obtain information pertaining to the factual allegations, legal claims and defenses at
4 issue in this action. Fed. R. Civ. P. 26(b)(1), 30. Under Federal Rule of Civil Procedure 37,
5 when an adverse party fails to cooperate in discovery, the party seeking discovery may move to
6 compel disclosure or discovery. Fed. R. Civ. P. 37(a)(1). In particular, this type of motion may
7 be made if a deponent fails to answer a deposition question: “[A]n evasive or incomplete
8 disclosure, answer, or response must be treated as a failure to disclose, answer or respond.” Fed.
9 R. Civ P. 37(a)(4). If the motion is granted and the deponent thereafter fails to comply with the
10 court’s order to answer a deposition question, the failure may be treated as contempt of court and
11 the court may issue a variety of sanctions, including dismissal of the action. Fed. R. Civ. P.
12 37(b).

13 2. Motion to Reopen Discovery

14 Once a scheduling order has been filed pursuant to Federal Rule of Civil Procedure 16, the
15 “schedule may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P.
16 16(b)(4). The Ninth Circuit instructs district courts to consider the following factors in
17 determining whether to amend a Rule 16 scheduling order to reopen discovery:

18 (1) whether trial is imminent[;] (2) whether the request is opposed[;]
19 (3) whether the non-moving party would be prejudiced[;]
20 (4) whether the moving party was diligent in obtaining discovery
within the guidelines established by the court[;] (5) the foreseeability
of the need for additional discovery in light of the time allowed for
discovery by the district court[;] and (6) the likelihood that the
discovery will lead to relevant evidence.

22 City of Pomona v. SQM N. Am. Corp., 866 F.3d 1060, 1066 (9th Cir. 2017) (internal citations
23 omitted). Furthermore, “[d]istrict courts have ‘broad discretion to manage discovery and to
24 control the course of litigation under [Rule] 16.’” Hunt v. County of Orange, 672 F.3d 606, 616
25 (9th Cir. 2012) (quoting Avila v. Willits Envtl. Remediation Trust, 633 F.3d 828, 833 (9th Cir.
26 2011)).

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1 **B. Discussion**

2 1. Defendants' Position

3 In support of the motion to compel, defendants state that on June 25, 2025, defendants
4 deposed plaintiff, with plaintiff appearing from the California State Prison-Los Angeles County
5 (CSP-LAC) and defense counsel and the court reporter appearing by video. (ECF No. 49 at 3.)
6 During the deposition, which began at 9:06 a.m., defense counsel observed plaintiff was
7 disoriented, lethargic and unfocused. (Id.) Plaintiff frequently slurred his words, mumbled his
8 answers, gave disjointed or nonresponsive statements, and at times appeared to fall asleep. (Id.)
9 At approximately 9:29 a.m., defense counsel texted his supervisor, expressing his concerns that
10 plaintiff was under the influence of a substance because he was mumbling and continued to get
11 confused or distracted. (Id.) At approximately 10:10 a.m., defense counsel paused the deposition
12 for a recess. During the break, the court reporter emailed defense counsel, stating that plaintiff
13 was "sniffing or sucking on something." (Id.) Defense counsel observed plaintiff inhaling an
14 unknown substance from a container in his shirt pocket. (Id.) At 10:32 a.m., defense counsel
15 emailed the litigation coordinator to report what he and the court reporter had observed. (Id.)
16 When the deposition resumed after the break, defense counsel told plaintiff about his observations
17 and that for plaintiff's health and safety, defense counsel had emailed the litigation coordinator.
18 6/25/2025 Plaintiff Depo. Tr. at 52:10-12. Defense counsel told plaintiff that once defense
19 counsel heard back from the litigation coordinator, defense counsel intended to suspend the
20 deposition and resume it another day. Id. at 52:13-16. Plaintiff denied being under the influence
21 of any substance. Id. at 52:25-53:1-6. Due to a miscommunication between counsel and the
22 litigation coordinator, plaintiff was removed from the room by custody staff prior to the
23 deposition being terminated. Id. at 59:7-9, 61:1-6. Defendants terminated the deposition at 11:11
24 a.m. Id. at 59-60.

25 As a result, defendants move to compel plaintiff's further deposition to ensure that
26 plaintiff adequately participates in the deposition while not under the influence of any non-
27 prescribed substances.

28 Attached to the motion to compel is a copy of the rules violation report charging plaintiff

1 with disobeying an order. (ECF No. 49 at 47-48.) The report states that on June 25, 2025,
2 plaintiff was put in a holding cell and refused to provide a urine sample. (Id. at 48.) The rules
3 violation report was later reduced to a counseling chrono. (Id. at 4, 48.)

4 2. Plaintiff's Position

5 Plaintiff did not file an opposition to defendants' motion to compel. However, on August
6 25, 2025, plaintiff filed the pending request to remove defense counsel, which addresses the
7 circumstances of the deposition, and a request for a sixty day extension to respond to defendants'
8 written discovery requests. (ECF No. 46.) In a separate order, the Court granted Plaintiff until
9 October 24, 2025 to serve his responses. (ECF No. 50.)

10 In plaintiff's August 25, 2025 filing, plaintiff states that during the June 25, 2025
11 deposition, defense counsel falsely accused plaintiff of doing drugs during the deposition. (Id. at
12 1.) Plaintiff states that during the deposition, he informed defense counsel that he was not feeling
13 well. (Id. at 2.) Plaintiff states that at the time of the deposition, custody staff were standing right
14 outside the room. (Id.) On the day of the deposition, plaintiff was very sick and on medication.
15 (Id.) Plaintiff states that before he was taken to the deposition, plaintiff agreed to an unclothed
16 body search and was thoroughly searched before he came out of his cell. (Id. at 3.) Plaintiff
17 states that after he was removed from the deposition, prison officials asked plaintiff to give a
18 urine sample. (Id.) Plaintiff states that he was later falsely charged with refusing to give a urine
19 sample. (Id.) Plaintiff appears to claim that after being removed from the deposition, he was
20 placed in a holding cage, where plaintiff threw up and defecated at the same time, possibly due to
21 diabetic medicine plaintiff was taking. (Id.) Plaintiff states that he asked to be taken to his cell
22 where plaintiff would give the urine sample. (Id. at 4.) Plaintiff states that he has been in prison
23 for a very long time and has never refused to give a urine sample. (Id.) Plaintiff states that it was
24 well documented that he was sick and had not been able to get out of his bed for weeks to do his
25 normal program. (Id. at 7.)

26 At the deposition, plaintiff testified that he was sick:

27 Q: And I notice that, you know, you seem a little tired and a little
28 sleepy. And I'm wondering are any of the medications that you are
currently on causing you to feel a little tired?

1 A: I'm—I'm sick, yeah. I mean, I been—I been real—very sick.
2 You hear me? So I'm taking—I'm coming down—like, I'm on a lot
3 of medication right now anyway because I'm sick. I'm under the
4 weather.

5 Q: Okay.

6 A: I just—I was on antibiotics. And the antibiotics, I just had strep
7 throat and all of that. So yeah.

8 6/25/2025 Plaintiff Depo. Tr. at 24:4-16.

9 3. Analysis

10 For the following reasons, defendants' motion to compel is granted. As discussed above,
11 defendants are entitled to take plaintiff's deposition. This Court need not reach the cause of
12 plaintiff's condition at the deposition because, regardless of the cause, defendants were unable to
13 complete plaintiff's deposition. For these reasons, defendants' motion to compel is granted. See
14 Fed. R. Civ. P. 26(b)(1), 30.

15 For the following reasons, this Court finds good cause to reopen discovery so that
16 defendants may conduct a further deposition of plaintiff. Except for plaintiff's responses to
17 defendants' written discovery, discovery closed on August 29, 2025.¹ (ECF No. 44.) Applying
18 the six factors to reopen discovery set forth above, this Court first finds that trial is not imminent
19 because no trial date has been set. As to the third factor, there is no prejudice to plaintiff in
20 permitting defendants to complete plaintiff's deposition. As to the fourth factor, defendants were
21 diligent in seeking to depose plaintiff. As to the fifth factor, it was foreseeable that defendants
22 would need to further depose plaintiff following the June 25, 2025 deposition. In making this
23 finding, this Court finds that there is no evidence that defense counsel acted in bad faith during
24 the deposition when he expressed concerns for plaintiff based on plaintiff's conduct at the
25 deposition. As to the final factor, the further deposition of plaintiff will likely lead to relevant
26 evidence. Though it appears that plaintiff opposes defendants' request to compel a further
27 deposition (second factor), this Court finds that the other five factors weigh in favor of re-opening

28 ¹ The Court previously granted plaintiff's request for an extension until October 24, 2025 to
serve his responses. (ECF No. 50.)

1 discovery to allow defendants to complete plaintiff's deposition. In this analysis, the Court does
2 not make and need not make any findings as to the parties' arguments regarding the cause of
3 plaintiff's condition during the June 25, 2025 deposition, whether any substances were ingested
4 during the deposition, or conduct after the deposition.

5 Turning to the length of plaintiff's further deposition, Federal Rule of Civil Procedure
6 30(d)(1) provides that, unless otherwise stipulated or ordered, a deposition is limited to one day of
7 seven hours but that "the court must allow additional time consistent with Rule 26(b)(1) and (2) if
8 needed to fairly examine the deponent or if the deponent, another person, or any other
9 circumstances impedes, or delays, the examination." Fed. R. Civ. P. 30(d)(1). In the motion to
10 compel, defendants claim that plaintiff's deposition was suspended due to plaintiff's condition,
11 which impeded defendants' fair examination of plaintiff. (ECF No. 49 at 6.) Defendants request
12 that they be allowed to continue plaintiff's deposition beyond the normal single-day limit to
13 obtain the discovery needed for their defense. (*Id.*) Good cause appearing, defendants' request is
14 granted, discovery is reopened, and the further deposition of plaintiff may be taken in one day for
15 up to seven hours.²

16 Plaintiff is cautioned that if he refuses to participate in the further deposition, defendants
17 may move for sanctions, including terminating sanctions.

18 Discovery is reopened for 45 days for the limited purpose of defendants' further
19 deposition of plaintiff. Because 45 days from the date of this order falls on a Saturday, discovery
20 is reopened up to and including November 24, 2025 for defendants to complete the further
21 deposition of plaintiff.

22 **III. PLAINTIFF'S REQUEST TO REMOVE DEFENSE COUNSEL**

23 Plaintiff requests that the Deputy Attorney General who conducted the deposition be
24 removed from this action because he falsely accused plaintiff of being impaired at the deposition.
25 (ECF No. 46.) This Court does not have the authority to remove the Deputy Attorney General
26 from this action. To the extent plaintiff seeks sanctions against the Deputy Attorney General

27 ² The deposition transcript from the June 25, 2025 deposition reflects that it began at 9:06 a.m.
28 and ended at 11:11 a.m.

1 based on the June 25, 2025 deposition, this Court finds no grounds for sanctions. Accordingly,
2 plaintiff's request to remove the Deputy Attorney General is denied.

3 **IV. PRETRIAL MOTION DEADLINE**

4 The current pretrial motion deadline is November 21, 2025. (ECF No. 44.) Because
5 discovery is reopened up to and including November 24, 2025, the pretrial motion deadline is
6 reset to Friday, January 9, 2026.

7 **V. CONCLUSION**

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. Plaintiff's request to remove defense counsel (ECF No. 46) is denied;
- 10 2. Defendants' motion to compel plaintiff's further deposition (ECF No. 49) is granted;
- 11 3. Discovery is reopened up to and including November 24, 2025 for the limited purpose
of defendants completing plaintiff's further deposition; and

13 4. The pretrial motion deadline of November 21, 2025 is vacated and reset to Friday,
14 January 9, 2026.

16 Dated: October 9, 2025

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18 CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

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